

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SILAS ELMAN ALVAREZ CIFUENTES and JOHN
DOE, *on behalf of themselves, FLSA Collective Plaintiffs*
and the Class,

Plaintiffs,

-against-

HAMO INC., *d/b/a Jerusalem Restaurant*, LITTLE WEST:
INC., *d/b/a Broadway Pizza*, MOHAMED ELHASSANI,
RACHID BOURASSA, AND HAKIM CHANTIT,

Defendants.

MEMORANDUM DECISION
AND ORDER

17 Civ. 5357 (GBD) (KHP)

GEORGE B. DANIELS, United States District Judge:

Plaintiff Silas Elman Alvarez Cifuentes brings this action against Defendants Hamo Inc., Little West Inc., Mohammed Elhassani, Rachid Bourassa, and Hakim Chantit, alleging unpaid wages and overtime. (Am. Compl., ECF No. 22.) Defendants Bourassa and Chantit were previously dismissed from this action. (Stipulation of Voluntary Dismissal Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), ECF No. 65.)

Before this Court is Magistrate Judge Katharine H. Parker's November 30, 2020 Report and Recommendation (the "Report"), recommending that this Court enter default judgment against Elhassani and award Plaintiff \$238,595.60. (Report, ECF No. 96, at 11.) Magistrate Judge Parker advised the parties that failure to file timely objections to the Report would constitute a waiver of those objections on appeal. (*Id.* at 12.) No objections were filed.

A court "may accept, reject, or modify, in whole or in part, the findings or recommendations" set forth in a magistrate judge's report. 28 U.S.C. § 636(b)(1)(C). A magistrate

judge's report to which no objections are made is reviewed for clear error. *See Edwards v. Fischer*, 414 F. Supp. 2d 342, 346–47 (S.D.N.Y. 2006) (citations omitted). Clear error is present when “upon review of the entire record, [the court is] ‘left with the definite and firm conviction that a mistake has been committed.’” *United States v. Snow*, 462 F.3d 55, 72 (2d Cir. 2006) (citation omitted).

Defendant Elhassani was initially represented by counsel in this action. He, however, “failed to communicate with his counsel, failed to participate in discovery and attend scheduled conferences, and failed to respond to multiple efforts to reach him.” (Report at 1.) Accordingly, on August 22, 2020, Magistrate Judge Parker granted Elhassani’s former counsel’s motion to withdraw. (Endorsed Mot. to Withdraw as Counsel of Record, ECF No. 81.) On Plaintiff’s motion, Magistrate Judge Parker subsequently issued an order requiring Elhassani to show cause why the Court should not enter a default judgment against him pursuant to Federal Rule of Civil Procedure 55(b). (Order to Show Cause for Entry of Default J., ECF No. 94.) Elhassani neither filed a response nor appeared at the show cause hearing held by Magistrate Judge Parker on November 24, 2020.

Considering Elhassani’s “utter failure to participate in discovery and frustration of the purpose of the rules of discovery,” Magistrate Judge Parker appropriately determined that rendering a default judgment against Elhassani is warranted, pursuant to Rule 37(b)(2)(A)(vi). (Report at 4.) Magistrate Judge Parker then conducted a comprehensive and careful inquest. (*See id.* at 4–11.) Magistrate Judge Parker concluded that Plaintiff is entitled to \$115,797.80 in unpaid regular, overtime, and spread of hour wages; \$115,797.80 in liquidated damages; and \$10,000 in statutory penalties for violations of wage notice and statement requirements. (*Id.* at 11.) At Plaintiff’s request, Magistrate Judge Parker deducted \$3,000 from the total to account for

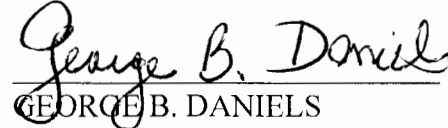
Plaintiff's settlement with Bourassa and Chantit, resulting in a total award of \$238,595.60. (*Id.*)

This Court finds no error, clear or otherwise in the Report's analysis.

Magistrate Judge Parker's Report is ADOPTED in its entirety. Final judgment shall be entered against Defendant Elhassani ordering him to pay Plaintiff a total of \$238,595.60 in unpaid wages, liquidated damages, and statutory penalties.

Dated: New York, New York
April 12, 2021

SO ORDERED.



GEORGE B. DANIELS

United States District Judge